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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/737,841	12/14/2000	Donald F. Gordon	SEDN/308	9495

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EXAMINER

JEANTY, ROMAIN

ART UNIT PAPER NUMBER

3623

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/737,841

Applicant(s)

GORDON ET AL.

Examiner

Romain Jeanty

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13, 16, 18, 21-24 and 29 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-13, 16, 18, 21-24, and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Final Office Action is in response to the communication received on November 29, 2005. Claims 1-13, 16, 18, 21-24, and 29 are pending in the application.

### **Response to Arguments**

2. Applicant's arguments filed November 25, 2005 have been fully considered but they are not persuasive. Note Remarks below.

### **Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 4-13, 16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Herz et al "Herz" (U.S. Patent No. 5,758,257).

As per claims 1, 4-9, 11-13, 16, 18, Herz discloses a system and method for scheduling broadcast of and access to video programs and other data using customer profiles. In so doing, Herz discloses propagating, via a forward application transport channel (FATC), a plurality of video streams representing respective pages of an interactive program guide (IPG), each IPG page depicting programming associated with a respective pair of channel groups and time slots (col. 10, lines 6-20 and col. 24 line 56 through col. 25 line 6), polling the plurality of terminals for trend data (col. 6, line 56 through col. 7 line 5; and col. 41, lines 42-56), receiving via a back

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channel, subscriber selections associated with at least one IPG page (col. 6 line 56 through col. 7 line 5 and col. 43, lines 3-12), determining trend data associated with accumulated subscriber selection, and adapting at least one IPG page in response to said determined trend data (col. 45. lines 34-55).

As per claim 10, Herz further discloses wherein the subscriber selections include a selection for a particular filter icon from among a plurality of filter cons provided in a user interface presented at a set top terminal (col. 29, lines 31-51)

### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 2-3, 21-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Herz et al “Herz” (US Patent No. 5,758,527) in view of Hendricks et al “Hendricks” (US Patent No. 5,659,350).

As per claims 2-3, 21-24, Herz does not explicitly disclose the concept of stamping each event with a time of occurrence for the event. Hendricks in the same field of endeavor discloses the concept of stamping an event with a date and time (col. 29, lines 34-36). It would have been obvious to a person of ordinary skill in the art to modify the disclosures of Herz to include

stamping an event with a date and time as evidenced by Hendricks in order to allow for the organizing and packaging of television programs for transmission in a television delivery system.

### **Remarks**

7. Applicants asserted that Herz does not disclose the claimed invention. Applicants supported their assertion by arguing that Herz is simply not polling a plurality of terminal for trend data where the trend data includes subscriber selections comprising selections associated with at least one IPG page. In response, the examiner respectfully disagrees with applicants' arguments because Herz does disclose where the user selects a program from an electronic program guide that constitutes the selection associates with the electronic program guide page as claimed. Applicants are directed to Figure 9, element 914, and col. 45, lines 9-45).

In addition, in response to applicants' arguments on page 7 that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., trend data may be collected by highlighting and selection an "information link" without the user actually watching the program) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicants further argue that Herz fails to teach or suggest at least the limitation of polling the plurality of terminals for trend data, the trend data being generated by an application executing at the plurality of terminals, the preference indicating indicative information including subscribers selection received at the terminals, the subscribers selections comprising selections

associated with at least one IPG page. In response, again, the examiner respectfully disagrees with applicants' arguments because Herz does disclose where the user selects a program from an electronic program guide that constitutes the selection associates with the electronic program guide page as claimed. Applicants are directed to Figure 9, element 914, and col. 45, lines 9-45).

Applicants further argue on page 10 that Hendricks fails to teach or suggest polling the plurality of terminals for trend data, the trend data being generated by an application executing at the plurality of terminals, the preference indicating indicative information including subscribers selection received at the terminals, the subscribers selections comprising selections associated with at least one IPG page, and that the Herz and Hendricks references, alone or in combination, fails to teach or suggest applicant's invention as a whole. In response, the examiner respectfully disagrees with applicants' arguments because Herz does disclose the concept of polling terminals for retrieving channel access information/trend data of a user. Note col. 9, line 62 through col. 10 line 9 of Hendricks.

### **Conclusion**

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

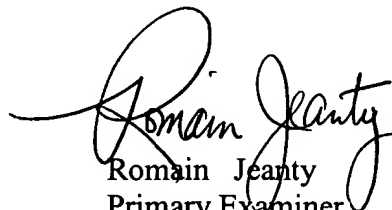
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Romain Jeanty whose telephone number is (571) 272-6732. The examiner can normally be reached on Mon-Thurs 7:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq R. Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RJ

February 19, 2006

  
Romain Jeanty  
Primary Examiner  
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